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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,805	08/04/2003	Randall T. Webber	5767-PA24	7187
27189	7590	10/01/2007		
PROCOPIO, CORY, HARGREAVES & SAVITCH LLP			EXAMINER	
530 B STREET			DONNELLY, JEROME W	
SUITE 2100				
SAN DIEGO, CA 92101			ART UNIT	PAPER NUMBER
			3764	
			NOTIFICATION DATE	DELIVERY MODE
			10/01/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@procopio.com  
PTONotifications@procopio.com

# Office Action Summary

Application No.

10/633,805

Applicant(s)

WEBBER ET AL.

Examiner

Jerome W. Donnelly

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) \_\_\_\_ is/are rejected. 1-3, 8, 9, 11, 14, 15, 18, 21, 22, 24, 26, 27, 35-41, 49, 53 and 55-60
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

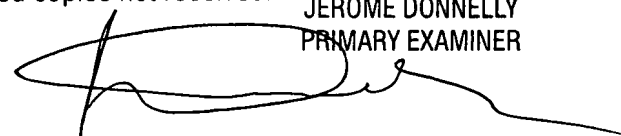
- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

JEROME DONNELLY  
PRIMARY EXAMINER



## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

### Supplemental Replies

A reply that is supplemental to a reply that is in compliance with 1.111(b) will not be entered as a matter of right except as provided in para (a) (2) (ii) of this section. The office may enter a supplemental reply if the supplemental reply is clearly limited to:

- (A) cancellation of a claim.
- (B) Adoption of the examiner suggestion.
- (C) Allowance of the application.
- (D) Reply to an office action requirement made after the first reply.
- (E) Correction of informalities.
- (F) Simplification of issues for appeal filed within the period during which an action by the office is suspended under 1.103(a) of (c).

In this instance the amendments file 05/02/07 and 5/28/07 will not be entered.

The supplemental reply is clearly not limited to placement of the application in condition for allowance.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8, 9, 11, 14, 15, 18, 21, 24, 26, 36, 37, 38, 39, 40, 41, 50, 51, 52, 53-55, 57, 58 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over.

The above claims are rejected for the same reasons as set forth in the office action of 12/21/2006.

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The examiner further comments that the amendment of claim 1, wherein the applicant refers to the supports "remaining in the same orientation relative to one another" is considered as indefinite for fails to define what "the same angular orientation" is the applicant has failed to define the orientation, of the components of the support frame.

In regard to claim 36 the device of claim 36 discloses the movement of the support frame (32, 42) and being controlled by the actuation arm (60).

In regard to claim 50 Yu discloses a device having a movable exercise arm relative to frame member (32).

In regard to claim 60 note elements 60 and 61 of Yu.

In regard to claim 4, Yu discloses a device comprising a pad capable of contacting a user's chest.

In regard to claim 6, Yu discloses a device comprising pads. Applicant is reminded that applicant has failed to claim limitations of a pad which limit this device to a back of a user.

In regard to claim 18 Yu discloses main frame (13) , a user support frame 32, 42 and 52 having a primary support and a secondary support, the user support frame (42) having a lower separate section, which as broadly claimed is a base member. The base member having an upper end/upright extending at an angle, and is fixed relative to the lower of member 42, said lower end being the base. Yu discloses a user engagement device (60), a load, and a connecting link 33 linking movement of the user

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engagement device to movement of the user support frame. Applicant is not claiming that the linking device be attach to the user engagement device and the support frame.

The examiner further notes that the combined combination of elements 20, 22, 23, 42 and 60 serves to link movement of all of the above components including movement of the user support frame.

Claims 1, 22, 26, 27, 35, 37, 49 and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Yu.

Yu discloses the device of claims 1, 22, 26, 27, 35, 37 and 49 as claimed a user engagement (50) movably mounted to the frame, a connecting link (33, 53) pivotally attaching the user engagement device to the user support (32) and said user engagement device having an adjustable component (513).

In regard to applicants claim in claim 37 of the primary and secondary support traveling in the same angular orientation the examiner reminds the applicant that a specific orientation has not been claimed. The examiner further points out to the applicant that as broadly claimed support member (32) and 52 do remain in the same plane/angular 180° longitudinal orientation relative to each other along the longitudinal length of the base member.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yu in view of Chen.

Claim 49 is rejected for the same reasons as set forth in the office action of 12/21/06. The examiner notes that it is well known in the art to manufacture exercise arms as being adjustable in view of the exercise arms of Chen for the purpose of adjusting the device to user's of different sizes.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571) 272-4975.

Jerome Donnelly

JEROME DONNELLY  
PRIMARY EXAMINER

